

ZB# 84-15

Zeta Holding Corp.

4-1-9.21

84-15 - Zeta Holding Corp.
(Patsalos - owner)

Prelim:

9/10/84

Site Plan Requested.

2nd Prelim.

Public Hearing:

Nov. 26, 1984

Order list from Assessor

CCPD to be notified on 11/13/84.

Notice to The Sentinel

on 11/13/84. ✓

Use & Area

Zoned:
OLI

Variances required:

- ① Use -
- ② Height - 17.3'
- ③ front yard - 36'

Call when ready

Drake moving
located
on Union Ave.
(next to Town Garage)

Oxford

ESSELTE

MADE IN U.S.A.

NO. 753 1/3

- ① How long was property for sale?
- ② Who was realtor?
- ③ Evidence (letter from realtor)

TOWN OF NEW WINDSOR
555 Union Avenue
New Windsor, N.Y. 12550

General Receipt

6155

Dec. 17 1984

Call when ready

Drake moving
located
55 Union Ave.
(next to Town Garage)

Oxford

ESSELTRE

MADE IN U.S.A.

NO. 753 1/3

- ① How long was property for sale?
- ② Who was realtor?
- ③ Evidence (letter from realtor)

TOWN OF NEW WINDSOR			General Receipt		6155
555 Union Avenue New Windsor, N. Y. 12550			Dec. 17 1984		
Received of <u>Rider Drake-Simmers & Co. P.C.</u>			\$ <u>90.00</u>		
<u>Ninety Dollars 00/100</u>					DOLLARS
For <u>Assessor's Variance List And Zoning Fee 84-15</u>			#50.00 zoning fee #40.00 Assessor's Variance List		
DISTRIBUTION: <u>(one check)</u>					
FUND	CODE	AMOUNT	By <u>Pauline B. Townsend</u>		
<u>Long</u>			Title <u>Town Check</u>		
<u>Check # 15991</u>		<u>90.00</u>			
<u>DATE 11-9-84</u>					

Williamson Law Book Co., Rochester, N. Y. 14609

Copy Pat Delio

PUBLIC NOTICE
BEFORE
ZONING BOARD OF APPEALS
TOWN OF NEW WINDSOR
PLEASE TAKE NOTICE that the
Zoning Board of Appeals of the
TOWN OF NEW WINDSOR, New
York will hold a Public Hearing
pursuant to Section 48-34A of the
Zoning Ordinance on the follow-
ing proposition:
Appeal No. 15
Request of ZETA HOLDING
CORP. for a VARIANCE of the
Regulations of the Zoning Or-
dinance to permit construction
of restaurant and health club in
an OLI (Office/Light Industry)
zone with insufficient front
yard, building height and ex-
cessive signage;
being VARIANCES of Sections
48-9 Table of Use Regs. Cols. A
and D and Section 48-12 Table
of Bulk Regs. Cols. 6 & 10, for
property situated as follows:
Eastside of Union Avenue,
Town of New Windsor, New
York, known as Tax Lot Section
4-Block 1-Lot 9-21.
SAID HEARING will take place
on the 26th day of November,
1984 at the New Windsor Town
Hall, 555 Union Avenue, New
Windsor, New York, beginning at
7:30 p.m.
DANIEL P. KONKOL
Chairman
PATRICIA DELIO
Secretary

State of New York

County of Orange, ss:

Everett W. Smith, being duly sworn

disposes and says that he is

Publisher of the E.W. Smith

Publishing Company, Inc. publisher

of The Sentinel, a weekly newspaper

published and of general circulation

in the Town of New Windsor, and that

the notice of which the annexed is

a true copy was published ONCE

in said newspaper, commencing on

the 15th day of November A.D., 1984

and ending on the 15th day of November

A.D. 1984

Subscribed and shown to before me

this 23rd day of Jan., 1985.

Patricia Delio

Notary Public of the State of New York
County of Orange.

My commission expires March 30, 1985

PATRICIA DELIO
NOTARY PUBLIC, State of New York
No. 5970776
Qualified in Orange County
Commission Expires March 30, 1985

ZONING BOARD OF APPEALS : TOWN OF NEW WINDSOR

-----X
In the Matter of the Application of

ZETA HOLDING CORP.,

84-15.

DECISION GRANTING
USE AND AREA VARIANCES
DENYING SIGN VARIANCE

-----X
WHEREAS, ZETA HOLDING CORP. of P. O. Box 2175,
Newburgh, N. Y. 12550, has made application before the
Zoning Board of Appeals for use, area & sign variance (s) for the purpose
of: construction of restaurant and health club in OLI (Office/Light Indust-
rial) zone;
and

WHEREAS, a public hearing was held on the 26th day of
November, 1984 at the Town Hall, 555 Union Avenue, New Windsor,
New York; and

WHEREAS, applicant appeared by Richard J. Drake, Esq.,
Rider, Drake, Sommers & Loeb, P.C., Newburgh, N.Y.; and

WHEREAS, the application was opposed; and

WHEREAS, the Zoning Board of Appeals of the Town of New
Windsor makes the following findings of fact in this matter:

1. The notice of public hearing was duly sent to residents
and businesses as prescribed by law and published in The Sentinel, also
as required by law.

2. The evidence shows: that the parcel of property has been
actively listed for sale through local real estate brokers for approximate
16 years as zoned.

3. The evidence shows: that the use proposed is a higher and
better use than the uses permitted under the OLI listings

4. The evidence shows: that property cannot yield a reasonable return under the OLI zoning classification

WHEREAS, the Zoning Board of Appeals of the Town of New Windsor makes the following findings of law in this matter:

1. The evidence indicates that the aforesaid circumstances or conditions are such that the strict application of the provisions of the local law would deprive the applicant of the reasonable use of such land or building.

2. The evidence indicates that the plight of the applicant is due to unique circumstances and not to general conditions suffered by other persons within the same zone.

3. The evidence shows that the applicant will encounter practical difficulty if the area variance requested is not granted.

4. The proposed variance will not result in substantial detriment to adjoining properties or change the character of the neighborhood.

NOW, THEREFORE, BE IT

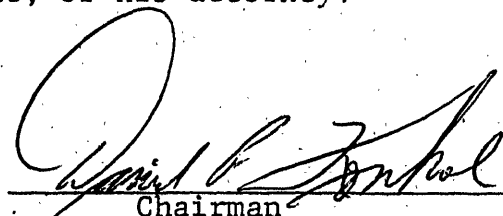
RESOLVED, that the Zoning Board of Appeals of the Town of New Windsor grants 72' frontyard; 2.41 acres area; 8 ft. height; and use variances, but denies the sign portion of the application, in accordance with plans submitted at the public hearing, subject to site plan approval by Planning Board and subject, also, to Planning *

BE IT FURTHER,

RESOLVED, that the Secretary of the Zoning Board of Appeals of the Town of New Windsor transmit a copy of this decision to the Town Clerk, Town Planning Board and applicant, or his attorney.

Dated: December 10, 1984.

* Board approval as the environmental lead agency.


Chairman



Louis Heimbach
County Executive

1/2/85 CC: Pat Kennedy
ZBA members file copy

**Department of Planning
& Development**

124 Main Street
Goshen, New York 10924
(914) 294-5151

Peter Garrison, Commissioner
Richard S. DeTurk, Deputy Commissioner
Paul Costanzo, Director of Community Development

December 17, 1984

Mr. Daniel Konkol, Chairman
Town of New Windsor Planning Board
555 Union Avenue
New Windsor, New York 12550

RECEIVED
TOWN OF NEW WINDSOR

DEC 27 1984

Re: Application of ZETA Holding COPP for
Variance to Construct a Restaurant and
Health Club - Union Avenue, N.Y.S.
Route 300
Our File No. NWT 10-84M

BY: Patricia Delis

Dear Mr. Konkol:

The above referenced Application has been referred to us for consideration pursuant to the applicable provisions of Article 12-B, Section 239, Paragraphs 1 and m of the General Municipal Law of the State of New York.

The proposed use is good and with properly engineered environmental safe guards can co-exist with Lake Washington.

The proposed use is not a clearly stated permitted use in the OLI or any other comparable Zone.

The placement of this request before the ZBA is wrong.

The time (and cost) of calling upon the Applicant to satisfy the "unnecessary hardship standard" with no assurance that the trier of fact will decide in his or her favor is unconscionable.

I am placing this Application on hold pending consideration by the Town of a zoning amendment that will, within certain, prescribed parameters, permit such uses in an OLI Zone (and possibly other zones). Your Zoning provides for "outdoor" type recreation uses in OLI. Why not "Indoor"? Health clubs, restaurants, etc. are increasingly viewed synonymously with corporate and industrial parks, office centers, and research "think tanks".

Sincerely,

Peter Garrison

Peter Garrison
Commissioner of Planning & Development

PG:oor

TOWN OF NEW WINDSOR
ZONING BOARD OF APPEALS

APPLICATION FOR VARIANCE OR SPECIAL PERMIT

84-15

Date: 11/1/84

I. Applicant Information:

- (a) ZETA HOLDING CORP., P. O. Box 2175, Newburgh, NY x
(Name, address and phone of Applicant) (Owner)
- (b) NEWBURGH HEALTH CLUB
(Name, address and phone of purchaser or lessee)
- (c) RIDER, DRAKE, SOMMERS & LOEB, P. O. Box 991, Newburgh, NY
(Name, address and phone of attorney) Attn: Richard J. Drake, Esq.
- (d) N/A
(Name, address and phone of broker)

II. Application type:

- ☒ Use Variance ☒ Sign Variance
- ☒ Area Variance ☐ Special Permit

III. Property Information:

- (a) OLI Union Avenue (eastside) 4-1-9.21 2.59 acres +
(Zone) (Address) (S B L) (Lot size)
- (b) What other zones lie within 500 ft.? Planned Industrial (PI)
- (c) Is a pending sale or lease subject to ZBA approval of this application? yes
- (d) When was property purchased by present owner? 2/69
- (e) Has property been subdivided previously? no When?
- (f) Has property been subject of variance or special permit previously? no When? -
- (g) Has an Order to Remedy Violation been issued against the property by the Zoning Inspector? yes - 8/29/84
- (h) Is there any outside storage at the property now or is any proposed? Describe in detail: N/A

IV. Use Variance:

- (a) Use Variance requested from New Windsor Zoning Local Law, Section 48-9, Table of Use Regs., Col. A, to allow:
(Describe proposal) Construction of restaurant and health club in OLI (Office, Light Industrial) zone.

- (b) The legal standard for a "Use" variance is unnecessary hardship. Describe why you feel unnecessary hardship will result unless the use variance is granted. Also set forth any efforts you have made to alleviate the hardship other than this application.

This parcel of property has been actively listed for sale through real estate brokers located in the area for approximately 16 years. Although diligent efforts have been made to sell the property as zoned and failure to do so have lead the owners to believe that property cannot yield a reasonable return under the OLI classification.

V. Area variance:

- (a) Area variance requested from New Windsor Zoning Local Law, Section 48-12, Table of Bulk Regs., Cols. 6 & 10.

Requirements	Proposed or Available	Variance Request
Min. Lot Area <u>5 acres</u>	<u>2.59 acres</u>	<u>2.41 acres</u>
Min. Lot Width		
Reqd. Front Yd. <u>100 ft.</u>	<u>64 ft.</u>	<u>36 ft.</u>
Reqd. Side Yd. <u>/</u>	<u>/</u>	<u>/</u>
Reqd. Rear Yd.		
Reqd. Street Frontage*		
Max. Bldg. Hgt. <u>***</u>	<u>34 ft.</u>	<u>17.3 ft.</u>
Min. Floor Area*		
Dev. Coverage* <u>%</u>	<u>%</u>	<u>%</u>
Floor Area Ratio**		

* Residential Districts only

** Non-residential districts only

*** 4 inches per foot of distance to nearest lot line.

- (b) The legal standard for an "AREA" variance is practical difficulty. Describe why you feel practical difficulty will result unless the area variance is granted. Also, set forth any efforts you have made to alleviate the difficulty other than this application.

Setback and parking requirements limit available building location. In order to maximize the use of this parcel and provide a workable traffic pattern, the area variances are necessary.

VI. Sign Variance:

- (a) Variance requested from New Windsor Zoning Local Law, Section 48-9, Table of Use Regs., Col. D.

Bldg.	Sign	Requirements	Proposed or Available	Variance Request
	Sign 1	<u>20 sq. ft.</u>		
	Sign 2			
	Sign 3			
	Sign 4			
	Sign 5			
Total		<u>20 sq.ft.</u>	<u>sq.ft.</u>	<u>sq.ft.</u>

- (b) Describe in detail the sign(s) for which you seek a variance, and set forth your reasons for requiring extra or oversize signs.

- (c) What is total area in square feet of all signs on premises including signs on windows, face of building, and free-standing signs?

VII. Special Permit:

- (a) Special Permit requested under New Windsor Zoning Local Law, Section _____, Table of _____ Regs., Col. _____.

- (b) Describe in detail the use and structures proposed for the special permit.

VIII. Additional comments:

- (a) Describe any conditions or safeguards you offer to ensure that the quality of the zone and neighboring zones is maintained or upgraded and that the intent and spirit of the New Windsor Zoning Local Law is fostered. (Trees, landscaping, curbs, lighting, paving, fencing, screening, sign limitations, utilities, drainage.)

Review of attached site plan will reveal an extensive beautification of area, including landscaping with a variety of tree and shrubbery plantings, curb cuts, etc.

IX. Attachments required:

- ☒ Copy of letter of referral from Bldg./Zoning Inspector.
- ☒ Copy of tax map showing adjacent properties.
- ☒ Copy of contract of sale, lease or franchise agreement.
- ☒ Copy(ies) of site plan or survey showing the size and location of the lot, the location of all buildings, facilities, utilities, access drives, parking areas, trees, landscaping, fencing, screening, signs, curbs, paving and streets within 200 ft. of the lot.
- ☒ Copy(ies) of sign(s) with dimensions.
- ☒ Check in the amount of \$ 50.00 payable to TOWN OF NEW WINDSOR.
- ☐ Photos of existing premises which show all present signs and landscaping.

X. AFFIDAVIT

Date 11/1/84

STATE OF NEW YORK)
COUNTY OF ORANGE) SS.:

The undersigned Applicant, being duly sworn, deposes and states that the information, statements and representations contained in this application are true and accurate to the best of his knowledge or to the best of his information and belief. The applicant further understands and agrees that the Zoning Board of Appeals may take action to rescind any variance or permit granted if the conditions or situation presented herein are materially changed.

S/
(Applicant)
ZETA HOLDING CORP.
By:

Sworn to before me this

1st day of Nov., 1984.

S/

XI. ZBA Action:

(a) Public Hearing date _____.

(b) Variance is _____.

Special Permit is _____.

(c) Conditions and safeguards: _____

A FORMAL DECISION WILL FOLLOW
WHICH WILL BE ADOPTED BY
RESOLUTION OF ZONING BOARD OF APPEALS.



1763

TOWN OF NEW WINDSOR

555 UNION AVENUE
NEW WINDSOR, NEW YORK
(914) 565-8550

November 28, 1984

RIDER, DRAKE, SOMMERS & LOEB P.C.
P. O. Box 991
Newburgh, N. Y. 12550

Attn: Richard J. Drake, Esq.

RE: APPLICATION FOR VARIANCES - ZETA HOLDING CORP.
#84-15

Dear Mr. Drake:

This is to confirm that use and area variances applied for by ZETA HOLDING CORP. were approved by the New Windsor Zoning Board of Appeals at a public hearing held on November 26, 1984. The sign variance, however, was denied.

Formal decision in this matter will be drafted and acted upon by the Board at a later date. I will forward a copy to you by return mail.

If I can be of further assistance, please do not hesitate to call.

Sincerely,

PATRICIA DELIO, Secretary
New Windsor Zoning Board of Appeals

/pd

HUDSON VALLEY DIE CUTTING CO.

P. O. Box 606
Newburgh, N. Y. 12550
914 - 561-6211

Ref *Zeta file*

Date November 21, 1984

Subject Zeta Holding Corp.

To Zoning Board of Appeals
Town of New Windsor
New Windsor Town Hall
555 Union Avenue
New Windsor, New York 12550

Attention: Daniel P. Konkol, Chairman

Gentlemen:

I am the owner of 65 Renwick Street, City of Newburgh and have operated a business from here for 25 years.

It has been brought to my attention that a restaurant and health club is being proposed on the east side of Union Avenue, Town of New Windsor almost directly on the west bank of Washington Lake.

This is the city's only water supply and restaurants beget rodents, overflow garbage and waste in general jeopardizing the quality of our only water supply.

I am told that hardship must be shown by the party. There is no hardship here as the parties can erect offices and light industry on this site.

I therefore strongly object to this request.

RECEIVED
ATTORNEY'S OFFICE

Very truly yours,

TOWN OF NEW WINDSOR HUDSON VALLEY DIE CUTTING CO.

NOV 26 1984

Saverio Mancuso
SAVERIO MANCUSO

BY: Patricia Delio



CITY OF NEWBURGH

CITY MANAGER'S OFFICE

CITY HALL
NEWBURGH, NEW YORK
12550

Phone (914) 565-3333

MATTHEW B. GALLIGAN
City Manager

November 20, 1984

Mr. Daniel P. Konkol, Chairman
Zoning Board of Appeals
Town of New Windsor
555 Union Avenue
New Windsor, NY 12550

Dear Mr. Konkol:

The City of Newburgh has received a Notice of Public Hearing regarding the request for a variance by Zeta Holding Corp. It is my understanding that the hearing will be held on November 26th. The City intends to have a representative there but I do want you to know what our position is now.

The City very strenuously objects to a rezoning or a variance of the zoning of this particular parcel on the east side of Union Avenue because the property almost abuts the reservoir of the City of Newburgh. Probably when the area was initially zoned it was zoned light industrial to avoid such uses as restaurants and swimming pools. In my opinion this would not be an appropriate use of property that immediately adjoins a municipal reservoir and we strongly urge you not to grant this variance.

Very truly yours,

Matthew B. Galligan

MATTHEW B. GALLIGAN
City Manager

MBG/vp

cc: Corporation Counsel
Supt., Water Dept.

encl: Copy of Notice of Public Hearing

RECEIVED
ATTORNEYS OFFICE
TOWN OF NEW WINDSOR

NOV 26 1984

by: *Patricia Delia*

11/20/84 Public Hearing - ~~Carol Tenielle~~ Zeta Holding Corp.

Name:

Address:

RICHARD J. DRAKE, 427 Little Bridge Road

VINCENT J. DRAKE 15 NEW RD, TH. NEW

JOHN BASTOREK 154 Rte 17K TH. New

Bob Benzschberg 154 Rte 17K TH. New

Art Anthonisen R.D. #1 Montgomery, NY

P. TAXTER 72 Broadway RBG

J. O'NEILL JR. in favor 109 CHESTNUT DR. NEW WINDSOR

LOON GOLDIN ^{not} objecting 6 SLOANE ROAD NEWBURGH, N.Y.

Jim Patale 2 River Edge " "

Eldred P. Carbel Jr. 123 Sunset Dr. " "

R. A. Macmillan Tenielle Corp Union Ave

NEW WINDSOR ZONING BOARD OF APPEALS

November 26, 1984

Agenda:

7:30 p.m. - ROLL CALL

Motion to accept the minutes of the 10/22/84 meeting as written.

PRELIMINARY MEETING:

1. DEMA, PETER - Request for sign variance - EUROPEAN AUTO Northside of Union Avenue. Auto body repair shop is pre-existing in R-4 zone. Owner: Frank Clinton-New Windsor Automotive Engineering.
2. RUSSELL, DENNIS - Request for conversion of second floor over garage to apartment. Use variance required. (Lucas premises). 55 Melrose Avenue.
3. LEECHOW, STEPHANIE - Request for use variance to operate craft shop with retail sales in R-4 (residential) zone. Location: 5 Cresthaven Drive.

PUBLIC HEARINGS:

1. ENGENITO, MICHAEL J. & DOROTHY - Request for 10.5 ft. sideyard variance for construction of frame addition at 20 St. Anne's Drive.
2. ZETA HOLDING CORP. - Request for use/height and sign variance for combination health spa and restaurant on Union Avenue. Richard J. Drake, Esq. appearing in behalf of ZETA.
3. TERSILLO, CAROL - Request for construction of mini-warehouses behind Rosenbaum's on Rt. 32. Use variance required. Elias Grevas, L.S., present.

Decisions.

Adjournment.

Pat 565-8550 (0)
562-7107 (h)

TOWN OF NEW WINDSOR
ORANGE COUNTY, N. Y.
OFFICE OF ZONING - BUILDING INSPECTOR

prelim.
9/10/84

Site Plan Required

NOTICE OF DISAPPROVAL OF BUILDING PERMIT APPLICATION

File No.

Date *August 29, 1984*

To *Zeta Holding Corp*
% P.O. Box 2096
Newburgh, N.Y.

PLEASE TAKE NOTICE that your application dated *August 29, 1984*
for permit to *Construct a Combination Restaurant & Health Club*
at the premises located at *East side of Union Ave (N.Y.S. Rt 300)*
Tax Map Section 4 Block 1 Lot 9.21

is returned herewith and disapproved on the following grounds:

Site is located in an O.L.T. zone. Project would require
a use variance. Proposed sketch of building without
actual height shown appears to need a height variance.
(Sign variance)

[Signature]
Building Inspector

INTER-OFFICE CORRESPONDENCE

TO: TOWN PLANNING BOARD
BUILDING/ZONING OFFICER KENNEDY

FROM: ZONING BOARD OF APPEALS

SUBJECT: PUBLIC HEARINGS BEFORE ZBA - 11/26/84

DATE: 11/13/84

Please be advised that the following public hearings will be heard before the ZBA on Monday evening, November 26, 1984 at 7:30 p.m.:

- (1) ENGENITO, MICHAEL & DOROTHY
- (2) ZETA HOLDING CORP./NEWBURGH HEALTH CLUB
- (3) TERSILLO, CAROL SUE

I have attached hereto copies of the pertinent applications together with public hearing notices which were published in The Sentinel.

Patricia Delio, Secretary

/pd
Attachments - (2)

PUBLIC NOTICE OF HEARING BEFORE
ZONING BOARD OF APPEALS
TOWN OF NEW WINDSOR

PLEASE TAKE NOTICE that the Zoning Board of Appeals of the TOWN OF NEW WINDSOR, New York will hold a Public Hearing pursuant to Section 48-34A of the Zoning Ordinance on the following proposition:

Appeal No. 15

Request of ZETA HOLDING CORP. for a VARIANCE Of the Regulations of the Zoning Ordinance to permit: construction of restaurant and health club in an OLI (Office/Light Industry) zone with insufficient front yard, building height and excessive signage; being VARIANCES of Sections 48-9 - Table of Use Regulations- Cols. A and D and Section 48-12 - Table of Bulk Regs.- Cols. 6 & 10, for property situated as follows:
Eastside of Union Avenue, Town of New Windsor, New York, known as Tax Lot Section 4-Block 1-Lot 9.21.

SAID HEARING will take place on the 26th day of November, 1984 at the New Windsor Town Hall, 555 Union Avenue, New Windsor, New York, beginning at 7:30 P.M.

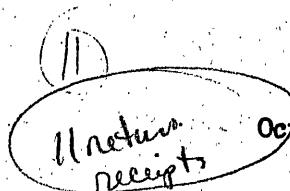
DANIEL P. KONKOL
Chairman



1763

TOWN OF NEW WINDSOR

555 UNION AVENUE
NEW WINDSOR, NEW YORK



October 23, 1984

Zeta Holding Corporation
PO Box 2175
Newburgh, NY 12550

Re: 4-1-9.21

Gentlemen:

According to my records, the attached list of property owners are within five hundred (500) feet of the above mentioned property.

The charge for this service is \$40.00. Please remit same to the Town Clerk, Town of New Windsor.

Very truly yours,

CHRISTIAN E. JAHLING
SOLE ASSESSOR, IAO
Town of New Windsor

CEJ/po

Attachment



1763

TOWN OF NEW WINDSOR

555 UNION AVENUE
NEW WINDSOR, NEW YORK

✓ County Garage
of Union Avenue
124 Main Street
Goshen, NY 10924

✓ Town of New Windsor ✓ 11/6/94.
555 Union Avenue
New Windsor, NY 12550

✓ Union Avenue Enterprises, Inc.
PO Box 87
Newburgh, NY 12550

✓ Maroney, James
813-817 Union Avenue
New Windsor, NY 12550

✓ Goldin, Edward Leon
c/o David Goldin & Son
Box 87
Newburgh, NY 12550

✓ Fenelon Prop., Inc.
600 Route 46
Clifton, NJ 07015

✓ Schaffner, Frank & Anna
510 Little Britain Road
New Windsor, NY 12550

✓ Newburgh Water Supply
c/o City Comptroller
City Hall
Newburgh, NY 12550

✓ Pavlik, Anthony M. & Mary
RD #2, Silver Stream Road
New Windsor, NY 12550

✓ O'Neill, John J., Jr. &
Maureen A. & James H.
109 Chestnut Drive
New Windsor, NY 12550

✓ Roscino, Joseph & Mary &
Talbot, Rose
c/o Rose M. Talbot
RD #1, Weyants Lane
Newburgh, NY 12550

SECTION 3

12.2

255.4A(C)
City of Newburgh

LAKE WASHINGTON

County of Orange

7
4 A

Town of
New Windsor

8
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1.2A

264.6
248.9

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1A

9.24

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9

342

100

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● 55.3A (C)

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1125



zoning appeals to grant variances. While the language of the statutes and ordinances was intentionally broad, interpretation by the courts has been generally narrow.

The courts, in developing standards to guide the boards of zoning appeal in their consideration of applications for use variances, have made a more modest estimate of the power of the boards than is true of the boards themselves. The statistics as well as the evolving standards suggest this conclusion. An examination of 200 decisions in which the courts reviewed boards of appeal decisions granting or denying applications for use variances discloses that 65 percent of the variances granted by boards were reversed by the courts. Only 25 percent of the board denials were reversed. The large number of reversals of board decisions granting variances was not accumulated during the early years of zoning when the standards were being articulated. In fact, if the cases are drawn from 10-year periods since zoning began, the same percentages obtain. No change can be detected except a gradual increase in volume of litigation. Thus, in 1960 and 1961, of 30 cases examined, 14 involved board decisions granting variances, and 10 of these were reversed. Of 16 denials, only 6 were reversed.

§ 23.08. Unnecessary hardship; *Otto v Steinhilber*.

In reviewing the decisions of boards of zoning appeal, the New York courts have been constantly aware that the power to grant variances from the strict application of zoning regulations can be so misused as to injure property owners and destroy the community plan. As early as 1927, Judge Cardozo epitomized this awareness when he said, "There has been confided to the Board a delicate jurisdiction and one easily abused."¹⁴ Consistent with this concern for property rights and for the community's interest in decisions consistent with its plan for orderly development, the courts moved quickly to find strict limitations in the broad language of the enabling acts.¹⁵

The enabling acts¹⁶ authorize the board of zoning appeals to

14. *People ex rel. Fordham Manor Reformed Church v Walsh*, 244 NY 280, 290, 155 NE 575 (1927).

15. The Court of Appeals decisions reflect that court's policy to limit the power of a board of zoning appeals to

grant variances. *Village Bd. of Fayetteville v Jarrold*, 53 NY2d 254, 440 NYS2d 908, 423 NE2d 385 (1981); citing *Anderson*, New York Zoning Law and Practice § 18.06.

16. § 23.07, *supra*.

vary the application of the regulations where literal enforcement will result in "practical difficulties or unnecessary hardship."¹⁷ The plain language of the acts permits the granting of a variance upon a showing of "practical difficulties" or a demonstration of "unnecessary hardship." The disjunctive nature of these standards made small impression on the courts until 1956 when it was held that an area variance might be granted upon a showing of "practical difficulties."¹⁸ Prior to that date, the courts either treated the two standards as one, assumed that the two terms were synonymous, or discussed the variance power in terms of unnecessary hardship without reference to practical difficulties.¹⁹ It has become an established rule that the courts will uphold the granting of a use variance by a board of zoning appeals only where the applicant has proved that a literal application of the zoning regulations will result in unnecessary hardship. This limitation upon the variance granting power of a board of appeals was articulated by the Court of Appeals at a very early date.²⁰ The rule has been consistently reaffirmed in decisions relating to use variances.¹ The Court of Appeals has

17. (Emphasis added.)

An applicant for a use variance must prove that a literal application of the ordinance would result in unnecessary hardship. *Croissant v Zoning Bd. of Appeals*, 83 AD2d 673, 442 NYS2d 235 (1981, 3d Dept); citing *Anderson, New York Zoning Law and Practice* § 18.07 (2nd ed, 1973).

18. *Bronxville v Francis*, 1 AD2d 236, 150 NYS2d 906 (1966, 2d Dept), affd 1 NY2d 839, 153 NYS2d 220, 135 NE2d 724.

"To be granted an area variance, the applicant must satisfy the less demanding standard of showing that strict compliance with the zoning law will cause 'practical difficulties'." *Consolidated Edison Co. v Hoffman*, 43 NY2d 598, 403 NYS2d 193, 374 NE2d 105 (1978); citing *Anderson, New York Zoning Law and Practice* § 18.07 (2nd ed 1973).

§ 23.33, *infra*.

19. See, for example, *People ex rel. Fordham Manor Reformed Church v Walsh*, 244 NY 280, 155 NE 575

(1927); *Court Boulevard, Inc. v Board of Standards & Appeals*, 274 AD 809, 79 NYS2d 816 (1948); *Muller v Zoning Bd. of Appeals*, 272 AD 1074, 75 NYS2d 192 (1947); *Hanover Service Station, Inc. v Murdock*, 258 AD 1075, 18 NYS2d 85 (1940).

20. *People ex rel. Fordham Manor Reformed Church v Walsh*, 244 NY 280, 155 NE 575 (1927).

1. *Taxpayers' Ass'n of South East Oceanside v Board of Zoning Appeals*, 301 NY 215, 93 NE2d 645 (1950); *Otto v Steinhilber*, 282 NY 71, 24 NE2d 851 (1939), reh den 282 NY 681, 26 NE2d 811; *Temple Israel of Lawrence v Plaut*, 6 AD2d 886, 177 NYS2d 660 (1958, 2d Dept); *Cusberth v Board of Standards & Appeals*, 274 AD 912, 83 NYS2d 258 (1948); *Ernst v Board of Appeals on Zoning*, 274 AD 809, 79 NYS2d 798 (1948), affd 298 NY 831, 84 NE2d 144; *Boyd v Walsh*, 217 AD 461, 216 NYS 242 (1926), affd 244 NY 512, 155 NE 877.

Where a landowner applied for an area variance but needed a use vari-

observed that since a prohibited use, if permitted, "will result in a use of the land in a manner inconsistent with the basic character of the zone, a heavier burden is placed on the applicant . . . and the enabling act has been construed to require a showing of 'unnecessary hardship' ".²

The assumption that proof of unnecessary hardship is an essential prerequisite to the granting of a use variance was firmly established at so early a date that most court decisions which discuss unnecessary hardship are concerned with the meaning of the term rather than the question whether such hardship must be shown. The circumstances which justify the granting of a variance on the ground of unnecessary hardship were summarized by the Court of Appeals in *Otto v Steinhilber*,³ a case which has become a landmark in the law of zoning. Reversing a board decision which granted a variance to conduct a commercial use in a residential district, the court said:

Before the Board may exercise its discretion and grant a variance upon the ground of unnecessary hardship, the record must show that (1) the land in question cannot yield a reasonable return if used only for a purpose allowed in that zone; (2) that the plight of the owner is due to unique circumstances and not to the general conditions in the neighborhood which may reflect the unreasonableness of the zoning ordinance itself; and (3) that the use to be authorized by the variance will not alter the essential character of the locality.

While these requirements were articulated and applied in earlier decisions,⁴ the Steinhilber statement became the classic one. It has been quoted or cited in hundreds of decisions, and it has been formally adopted in some ordinances.⁵

ance, his failure to demonstrate unnecessary hardship, or to prove that his circumstances are unique, supports a denial of relief by the zoning board of appeals. *Lauro v Brookhaven*, 94 AD2d 703, 462 NYS2d 58 (1983, 2d Dept).

2. *Consolidated Edison Co. v Hoffman*, 43 NY2d 598, 403 NYS2d 193, 374 NE2d 105 (1978); citing *Anderson*, *New York Zoning Law and Practice* § 18.32 (2nd ed 1973).

Denial of a variance to maintain a roof sign is proper where the applicant has failed to demonstrate unnec-

essary hardship, notwithstanding that the sign was erected under an illegally issued permit. *Silverman v Keating*, 52 AD2d 1076, 384 NYS2d 336 (1976, 4th Dept).

3. 282 NY 71, 24 NE2d 851 (1939), reh den 282 NY 681, 26 NE2d 811.

4. *Levy v Board of Standards & Appeals*, 267 NY 347, 196 NE 284 (1935); *Sagamore Road Corp. v Lee*, 224 AD 744, 230 NYS 58 (1928), affd 250 NY 532, 166 NE 313; *Boyd v Walsh*, 217 AD 461, 216 NYS 242 (1926), affd 244 NY 512, 155 NE 877.

5. *Zoning Rules and Regulations*,

While the description of unnecessary hardship, articulated in the Steinhilber Case, remains formally valid, some erosion of the component parts of the standard has occurred. These will be discussed at some length in later sections dealing with specific aspects of the content of the unnecessary hardship standard.⁶

§ 23.09. —New York City.

The zoning resolution of the city of New York has retained the basic requirement that the zoning regulations may be varied only in cases of practical difficulties or unnecessary hardship, but the elements of these terms are more precisely defined than is common in municipal zoning ordinances or in the cases. The board of standards and appeals may grant a variance only upon the following findings:

(a) That there are unique physical conditions, including irregularity, narrowness or shallowness of lot size or shape, or exceptional topographical or other physical conditions peculiar to and inherent in the particular zoning lot; and that, as a result of such unique physical conditions, practical difficulties or unnecessary hardship arise in complying strictly with the use or bulk provisions of the resolution; and that the alleged practical difficulties or unnecessary hardship are not due to circumstances created generally by the strict application of such provisions in the neighborhood or district in which the zoning lot is located.

(b) That because of such physical conditions, there is no reasonable possibility that the development of the zoning lot in strict conformity with the provisions of this resolution will bring a reasonable return, and that the grant of a variance is therefore necessary to enable the owner to realize a reasonable return from such zoning lot. This finding shall not be required for the granting of a variance to a non-profit organization.

(c) That the variance, if granted, will not alter the essential character of the neighborhood or district in which the zoning lot is located; will not substantially impair the appropriate use or development of adjacent property; and will not be detrimental to the public welfare.

(d) That the practical difficulties or unnecessary hardship claimed as a ground for a variance have not been created by the owner or by a predecessor in title. Where all other required findings are made, the purchase of a zoning lot subject to the restrictions sought to be varied shall not itself constitute a self-created hardship.

City of Syracuse, Part A § II Art 5 6. §§ 9.10-9.31, supra.
(1983).

(e) That within the intent and purposes of this resolution the variance, if granted, is the minimum variance necessary to afford relief; and to this end, the Board may permit a lesser variance than that applied for.⁷

2. NO REASONABLE RETURN

§ 23.10. No reasonable return from permitted use.

A zoning regulation imposes unnecessary hardship if property to which it applies cannot yield a reasonable return from any permitted use. For example, where land is located in a district limited to residential or commercial use, and where lack of transportation, sparse development, and the refusal of lending institutions to advance money for residential or commercial uses render uses consistent with the ordinance unfeasible, unnecessary hardship is said to result from literal application of the ordinance.⁸ Where a law other than a zoning regulation prohibits the use of an existing improvement for any purpose permitted by the zoning regulations, an unnecessary hardship is imposed on the owner of the land.⁹ Land occupied by deteriorated buildings, unusable as well as unsalable for any purpose permit-

7. Zoning Resolution, City of New York § 72-21 (1961, as amended).

8. *People ex rel. St. Albans-Springfield Corp. v. Connell*, 257 NY 73, 177 NE 313 (1931).

Denial of a variance application by a zoning board of appeals was not arbitrary or capricious where petitioner failed to establish economic hardship or to demonstrate practical difficulties. *Obermeier v. Amelkin*, 49 NY2d 807, 426 NYS2d 980, 403 NE2d 964 (1980).

The record does not support a finding that the portion of petitioner's property zoned for residential purposes cannot be reasonably utilized for such purposes. A use variance to permit use of the balance of a lot for restaurant parking purposes is denied. *North Shore Steak House, Inc. v. Board of Appeals*, 36 AD2d 855, 321 NYS2d 468 (1971, 2d Dept).

9. *North American Holding Corp. v.*

Murdock, 9 Misc 2d 632, 167 NYS2d 120 (1957), app dismd (1st Dept) 6 AD2d 596, 180 NYS2d 436, affd 6 NY2d 902, 190 NYS2d 708, 160 NE2d 926.

An application for a variance to extend commercial parking into a residential zone was properly denied where the applicant failed to prove that the land could not be used for residential purposes. *North Shore Steak House, Inc. v. Board of Appeals*, 30 NY2d 238, 331 NYS2d 645, 282 NE2d 606 (1972).

An application for a variance to establish a restaurant on the site of a nonconforming vegetable stand was properly denied where the evidence failed specifically to demonstrate that the applicant cannot realize a reasonable return from any residential use of the property due to the proximity of commercial development. *Scott v. Bellamy*, 26 NY2d 690, 308 NYS2d 859, 257 NE2d 41 (1970).

ted by the zoning regulations, is said to suffer hardship which may be relieved through a variance.¹⁰

A zoning regulation which prohibits the only use of land which is economically feasible, and effectively prevents development of the land, imposes an unnecessary hardship and warrants the granting of a variance if the other factors detailed in *Otto v Steinhilber*,¹¹ are present.¹² Absent proof that a reasonable return cannot be realized through permitted uses, the granting of a use variance is improper.¹³ The basic rule was expressed by

10. The granting of a variance to permit a gasoline station is not an abuse of discretion where the subject property is improved by dilapidated buildings, situated near a four-lane highway, and yielding no return. *Allen v Fersh*, 1 AD2d 918, 149 NYS2d 798 (1956, 3d Dept).

Unnecessary hardship is demonstrated where, because of size and height of barn it would be impractical to convert it to a single-family residence, no outward appearance of a business use exists, and the hardship is unique. *Fiore v Zoning Bd. of Appeals*, 21 NY2d 393, 288 NYS2d 62, 235 NE2d 121 (1968); discussed in Comment, *Variances in New York: A Trend Toward Flexibility*, 20 Syracuse L Rev 628 (1969).

11. 282 NY 71, 24 NE2d 851 (1939), reh den 282 NY 681, 26 NE2d 811.

12. Where a property owner applied for an area variance when he needed a use variance to accomplish his purpose, and where he failed to demonstrate unnecessary hardship, the application was properly dismissed. *Lauro v Brookhaven*, 94 AD2d 703, 462 NYS2d 58 (1983, 2d Dept).

The zoning board of appeals properly denied a use variance where the applicant failed to show that the present use could not yield a reasonable return. While the applicant did show that the proposed use would not alter the essential character of the neighborhood and showed unique attributes of his property, he did not attempt to establish that the present return was

inadequate. *Welch v Zoning Bd. of Appeals*, 71 AD2d 702, 418 NYS2d 486 (1979, 3d Dept).

A zoning ordinance which permitted only residential use in an area which was subject to profitable development only as a quarry imposed an unnecessary hardship on the land. *Goldstein v Board of Appeals*, 102 NYS2d 922 (1951, Sup).

13. Landowner's testimony that his land was unsuitable for farming because an adjacent dump caused flies and odors, and that his attempt orally to sell the parcel was unsuccessful, was insufficient to demonstrate that the land would not yield a reasonable return from any permitted use, an essential element in the granting of a variance to permit a land fill operation. *Tantalo v Zoning Bd. of Appeals*, 43 AD2d 793, 350 NYS2d 486 (1973, 4th Dept); discussed in *Anderson, Land Use Control, 1974 Survey of New York Law*, 26 Syracuse L Rev 149 (1975).

The zoning board of appeals properly denied a use variance where the applicant failed to show that the present use could not yield a reasonable return. While the applicant did show that the proposed use would not alter the essential character of the neighborhood and also showed unique attributes of his property, he did not attempt to establish that the present return was inadequate. *Welch v Zoning Bd. of Appeals*, 71 AD2d 702, 418 NYS2d 486 (1979, 3d Dept).

a New York court which said that the granting of a variance to establish a commercial use in a residential district will not be sustained where the applicant failed to prove that

the premises in question could not yield a reasonable return if used in conformity with the existing zoning regulations, or that the intervenors' problem is due to unique circumstances and that the proposed use for which the variance is sought would not alter the essential character of the neighborhood.¹⁴

§ 23.11. —Negation of fair return from permitted use.

The impossibility of realizing a reasonable return from a use permitted by the zoning regulations is not shown solely by proof that the existing use of the land is not yielding a profit. A variance may be granted only where the applicant has shown that no use permitted by the zoning regulations will bring a reasonable return.¹⁵ The courts frequently have held that an

Absent proof that the applicant's land will not yield a reasonable return if put to any use permitted by the ordinance, a board of zoning appeals is without authority to grant a variance. *Album v Anderson*, 25 AD2d 481, 266 NYS2d 893 (1966, 4th Dept).

The granting of a variance to establish a gasoline station is improper where the applicants are receiving a fair return on their property and there is no showing that the land in question will not yield a reasonable return if used as permitted by the zoning ordinance. *Fink v Carusone*, 25 AD2d 705, 267 NYS2d 999 (1966, 3d Dept).

An application for a variance to establish a restaurant on the site of a nonconforming vegetable stand was properly denied where the evidence failed specifically to demonstrate that the applicant cannot realize a reasonable return from any residential use of the property due to the proximity of commercial development. *Scott v Bellamy*, 26 NY2d 690, 308 NYS2d 859, 257 NE2d 41 (1970).

See also, *Kenyon v Quinones*, 43 AD2d 125, 350 NYS2d 242 (1973, 4th Dept).

14. *Fitzsimmons v Anderson*, 25 AD2d 488, 266 NYS2d 775 (1966, 4th Dept).

15. *Young Women's Hebrew Ass'n v Board of Standards & Appeals*, 266 NY 270, 194 NE 751 (1935), app dismd 296 US 537, 80 L Ed 382, 56 S Ct 109.

Approval of a use variance to operate an upholstery and furniture refinishing business in a residential district was erroneously granted by the Zoning Board of Appeals. There was no evidence of "dollars and cents proof" that the property cannot yield a reasonable return if restricted to the uses allowed under the ordinance. *Village Bd. of Fayetteville v Jarrold*, 75 AD2d 994, 429 NYS2d 110 (1980, 4th Dept), affd 53 NY2d 254, 440 NYS2d 908, 423 NE2d 385.

An application for an area variance to allow a tennis court, constructed before the application, was denied. Applicant did not meet the requirement of showing that he cannot use his property without conflicting with the ordinance. *Jarman v Hamburg*, 72 AD2d 575, 421 NYS2d 29 (1979, 2d Dept).

applicant for a use variance must negate all of the permitted uses of the premises.¹⁶ Since most zoning ordinances permit many uses in each zoning district,¹⁷ the problem of proving that none of the permitted uses would be profitable can be a severe requirement. Thus, a denial of a variance to maintain a convalescent home in a residence district was upheld because the applicant failed to show that the land could not be profitably used for home occupations, a school, a club, and other uses permitted by the zoning regulations.¹⁸ Cases imposing upon the applicant the burden of negating the possibility of a reasonable return from each use permitted by the zoning regulations are common, and they are generally consistent.¹⁹ Deviation from the

A variance to construct a warehouse was properly denied where the applicant failed to prove that he was unable to realize a reasonable return from any permitted use, and that the variant use would not change the essential character of the neighborhood. *Zimtbau v Glass*, 32 AD2d 789, 302 NYS2d 345 (1969, 2d Dept).

Where the zoning ordinance permitted use of applicants' land for home occupations, two-family dwellings, beauty parlors, convalescent homes, and nursing homes, it was improper for the board of zoning appeals to grant a variance to construct a lodge in the absence of proof that the permitted uses were not feasible. *Fasani v Rappaport*, 30 AD2d 588, 290 NYS2d 279 (1968, 3d Dept).

Denial of a variance to construct a barn for the raising and selling of horses in a residential district will be sustained where the applicant fails to demonstrate that the land in question will not yield a reasonable return from a permitted use. *Brodsky v Levy*, 58 Misc 2d 247, 295 NYS2d 20 (1968).

The denial of a variance to petitioner to build a four-family dwelling on his property was upheld by the court on the grounds that the record was devoid of any competent proof that the land could not be used for any of the permitted uses. *Jam Rick*

Homes, Inc. v Board of Appeals, 57 Misc 2d 820, 293 NYS2d 680 (1968).

See also, *Mika Realty Corp. v Horn*, 19 AD2d 724, 242 NYS2d 365 (1963, 2d Dept).

16. *Proc Bldg. Corp. v Connell*, 264 NY 513, 191 NE 541 (1934); *Stanco v Halperin*, 285 AD 815, 136 NYS2d 509 (1955).

Proof that residentially zoned property will not yield a reasonable return as zoned is deficient where the landowner has not shown that permitted nonresidential uses would not yield such a return. *Northern Westchester Professional Park Associates v Bedford*, 92 AD2d 267, 460 NYS2d 112 (1983, 2d Dept), affd 60 NY2d 492, 470 NYS2d 350, 458 NE2d 809.

17. § 9.08, supra.

18. *Ernst v Board of Appeals on Zoning*, 298 NY 831, 84 NE2d 144 (1949).

19. *Proc Bldg. Corp. v Connell*, 264 NY 513, 191 NE 541 (1934); *Stanco v Halperin*, 285 AD 815, 136 NYS2d 509 (1955) (nursery in residential district); *Shaw v Giglio*, 31 Misc 2d 282, 220 NYS2d 44 (1961) (gasoline station in residential district); *Colony Park, Inc. v Malone*, 218 NYS2d 769 (1961, Sup) (apartment in residential district).

requirement is infrequent.²⁰ But the Appellate Division has ruled that an applicant need not demonstrate that no reasonable return is possible from a special permit use, or one of a quasi-public nature.¹

§ 23.12. —Reasonable return from nonconforming use.

The requirement that an applicant for a use variance show that he cannot derive a reasonable return from any permitted use can impose an especially heavy burden upon a nonconforming user. An applicant who maintains a nonconforming use or structure must show not only that all permitted uses will be unprofitable, but that his nonconforming use of the premises is incapable of yielding a reasonable return. Thus, the owner of a nonconforming gasoline station who sought a variance to permit major remodeling proved that the obsolescence of his station rendered him unable successfully to compete with nearby stations, but he failed to qualify for a variance, because he did not show that the existing station was not yielding a reasonable return and that no such return would be enjoyed if he converted to any of a number of uses permitted in the district.² The same result was reached in the case of an owner of a nonconforming clambake facility who sought a variance to remodel and improve his premises. A decision of the board of zoning appeals granting the variance was nullified for failure of the applicant to negate the possibility of a fair return from permitted uses as well as his existing use.³

20. In a possible relaxation of strict requirements that the applicant negate the possibility of reasonable return from each use permitted by the zoning ordinance, the Second Department held denial of an application was an abuse of discretion where "dollars and cents" evidence, "together with inferences reasonably to be drawn therefrom and from other evidence, established that property could not yield any reasonable return" if used only for purposes allowed; over a vigorous dissent that such a showing had not been made with regard to each and every permitted use. *Stanley Park, Inc. v Donovan*, 38 AD2d 861, 330 NYS2d 111 (1972, 2d Dept), *affd in part and app dismd*

in part 32 NY2d 668, 343 NYS2d 133, 295 NE2d 798.

1. *Muller v Williams*, 88 AD2d 725, 451 NYS2d 278 (1982, 3d Dept).

2. *Crossroads Recreation, Inc. v Broz*, 4 NY2d 39, 172 NYS2d 129, 149 NE2d 65 (1958).

Nonconforming uses are discussed in Chapter 6, *supra*.

3. *Gerling v Board of Zoning Appeals*, 6 AD2d 247, 176 NYS2d 871 (1958, 4th Dept).

Refusal of the board of zoning appeals to grant a variance for the storage of fuel oil in a residential zone was upheld where applicant failed to show that neither his nonconforming

It should not be concluded that boards of zoning appeals act with complete fidelity to the requirements imposed by the courts. Examination of the decisions of one board, over a 3-year period, supports the conclusion that the stringent judicial standards may become quite modest limitations when they are redefined by a board with its own notions of its functions and powers.

Article 5.4.4 of the Syracuse zoning regulations prohibited the alteration, remodeling, or repair of a nonconforming building at a cost in excess of 30 percent of its assessed value. The provision is a common one and the courts have construed it so as to achieve its intended purpose, the elimination of nonconforming uses. If Court of Appeals requirements are respected, the applicant with the most difficult problem of proof is the nonconforming user who seeks to alter, remodel, or repair his building. Notwithstanding the severe standards applied by the courts to variances of this kind, the board of zoning appeals of the city of Syracuse granted 14 such variances and denied none during the period studied. This consistent success of nonconforming applicants can be explained only in terms of the board's redefinition of unnecessary hardship as it applies to a nonconforming user, and it is apparent that a strict Court of Appeals standard does not automatically produce local decisions of similar restraint.⁴

gravel pit nor any conforming use would yield a reasonable return. *Henry Steers, Inc. v Rembaugh*, 259 AD 908, 20 NYS2d 72 (1940), affd 284 NY 621, 29 NE2d 934.

4. In each case where a variance was granted to a nonconforming user, the board made at least a formal, conclusory statement that a literal application of the ordinance would impose practical difficulties or unnecessary hardship upon the applicant. In most instances, the board stated the findings upon which its conclusions were based. A representative case involved an application filed by a laundry company which operated as a nonconforming user in a fully developed residential district. The company sought to expand its facilities by adding a boiler room. The board granted the variance, concluding that "there

exists unnecessary hardship in that replacement of the existing boiler in its present location would cause interruption of business and employment." Syracuse Board of Appeals, File No V-59-24.

Clearly, this finding does not satisfy the concept of unnecessary hardship described in *Crossroads Recreation, Inc. v Broz*, 4 NY2d 39, 172 NYS2d 129, 149 NE2d 65 (1958). No reference is made to the return yielded by the existing use, nor is there any finding with respect to the return which might be realized through other permitted uses of the land. There is, at most, a finding of a possible financial loss of indefinite amount. Even if it were sufficient to show that the variance is essential to the continued operation of the nonconforming use, the finding of the board falls short.

§ 23.13. The quality and quantity of proof.

An earlier section of this treatise has discussed the quantity and quality of proof that is required when the validity of a zoning ordinance is challenged.⁵ While an applicant for a use variance need not prove beyond a reasonable doubt that he cannot realize a reasonable return from a permitted use, the

The sequel to this case is instructive. The variance to construct the boiler room was conditioned upon the filing of a bond to assure compliance with the applicant's proposed plans. No bond was filed. In fact, the applicant solved the boiler problem without reference to the variance. On a later date, after constructing an addition to its plant without seeking a variance, the company applied for new relief to construct a covered loading area. The board granted this variance on a finding that continuation of the existing business required "modern and efficient" loading facilities which could not be constructed without a variance from the restrictions of Article 5.4.4, and that to prevent such construction was to impose unnecessary hardship. Syracuse Board of Appeals, File No V-61-1.

The board's decision on the second variance also appears to be in conflict with *Crossroads Recreation, Inc. v Broz*, 4 NY2d 39, 172 NYS2d 129, 149 NE2d 65 (1958).

The laundry cases accurately reflect the board's notion of what constitutes an unnecessary hardship which warrants the granting of a variance in the case of a nonconforming user. The board does not require proof that no permitted use will yield a reasonable return, nor proof that without a variance the existing use will fail to yield a reasonable return. All that is required is that the applicant show a rational business or personal need to alter, remodel, or repair existing facilities, and in the view of the board such a showing is tantamount to unnecessary hardship. Thus, nonconforming business users have satisfied

the board's concept of hardship by proving that if a variance were granted they could operate more efficiently (Syracuse Board of Appeals, File No V-60-24), enjoy normal expansion (Syracuse Board of Appeals, File No V-59-27), realize more income (Syracuse Board of Appeals, File No V-60-26), add needed buildings (Syracuse Board of Appeals, File No V-29-22), or modernize their facilities (Syracuse Board of Appeals, File No V-61-1).

Nonconforming religious institutions have met the board's standard of hardship by showing that a literal application of the ordinance would result in loss of the value of walls which survived a fire (Syracuse Board of Appeals, File No V-59-1), or that expansion was essential to the efficient functioning of a church (Syracuse Board of Appeals, File No V-59-30). Nonconforming residential users have proved unnecessary hardship by showing a need for retirement income (Syracuse Board of Appeals, File No V-59-20), an increase in an occupant's family (Syracuse Board of Appeals, File No V-59-19), and a desire to build a garage (Syracuse Board of Appeals, File No V-61-38), a room (Syracuse Board of Appeals, File No V-61-40), or a porch (Syracuse Board of Appeals, File No V-61-24).

None of these appear to satisfy the strict requirements of *Otto v Steinhilber*, 282 NY 71, 24 NE2d 851 (1939), *reh den* 282 NY 681, 26 NE2d 811; *Crossroads Recreation, Inc. v Broz*, 4 NY2d 39, 172 NYS2d 129, 149 NE2d 65 (1958); and related cases.

5. § 3.10, *supra*.

quality of the required proof is similar. An applicant for a use variance must demonstrate such lack of a reasonable return by substantial evidence,⁶ and the evidence adduced must include "dollars and cents" proof.⁷ The Court of Appeals has held that an applicant has not shown that land will not yield a reasonable return where he has failed to prove (1) the amount paid by the

6. The Board of Estimate may set aside a variance granted by the Board of Standards and Appeals where the applicant failed to produce substantial evidence to support all findings required by Section 72-21 of the New York City Zoning Resolution. *Victory Boulevard Associates v New York*, 85 AD2d 725, 445 NYS2d 823 (1981, 2d Dept), rev'd on other grounds 58 NY2d 900, 460 NYS2d 501, 447 NE2d 49.

7. *Blumberg v Siegel*, 87 AD2d 650, 448 NYS2d 522 (1982, 2d Dept), app'dism'd 56 NY2d 984, 453 NYS2d 681, 439 NE2d 396; *58 Queens Blvd. Food Corp. v Board of Estimate*, 84 AD2d 565, 443 NYS2d 264 (1981, 2d Dept); *C.C.L.S., Inc. v Baruch*, 79 AD2d 1002, 435 NYS2d 22 (1981, 2d Dept).

Approval of a use variance to operate an upholstery and furniture refinishing business in a residential district was erroneously granted by the Zoning Board of Appeals. There was no evidence of "dollars and cents proof" that the property cannot yield a reasonable return if restricted to the uses allowed under the ordinance. *Village Bd. of Fayetteville v Jarrold*, 75 AD2d 994, 429 NYS2d 110 (1980, 4th Dept), aff'd 53 NY2d 254, 440 NYS2d 908, 423 NE2d 385; citing *Anderson*, *New York Zoning Law and Practice* § 18.12 (2nd Ed 1973).

The zoning board of appeals was correct in denying an application for a variance to allow more than one freestanding sign on applicant's property, as the petitioner did not offer the necessary dollars and cents proof which would allow the board to decide whether the denial of the variance would be an unnecessary hardship to the petitioner. *Sokoloff v Zoning Bd.*

of Appeals, 74 AD2d 868, 426 NYS2d 41 (1980, 2d Dept).

For a variance to be properly granted the owner must: 1) come forward with "dollars and cents" proof that the property cannot yield a reasonable return under the permitted use, 2) show that his situation is unique and not shared by others in the neighborhood, and 3) show that the proposed use will not change the essential character of the neighborhood. This was not done in the hearing before the zoning board of appeals. *Bartholomay v Zoning Bd. of Appeals*, 70 AD2d 784, 417 NYS2d 336 (1979, 4th Dept).

A variance to permit the construction of a four-story building with more floor space than is permitted by the zoning regulations will not be sustained where the applicant produced no dollars and cents proof and demonstrated only aesthetic objections to a smaller building. *Devore v Cazalet*, 68 AD2d 17, 416 NYS2d 282 (1979, 2d Dept), motion to dismiss app'den 48 NY2d 633, 421 NYS2d 196, 396 NE2d 478.

Denial of a variance to construct a restaurant which will violate a setback line, and to maintain a free-standing sign, will be sustained where the applicant has failed to demonstrate by "dollars and cents" proof that the land will not yield a reasonable return if used consistently with the zoning restrictions. *Stanley Park, Inc. v Donovan*, 34 AD2d 690, 312 NYS2d 472 (1970, 1st Dept), later app'd 38 AD2d 861, 330 NYS2d 111 (2d Dept), aff'd in part and app'dism'd in part 32 NY2d 668, 343 NYS2d 133, 295 NE2d 798.

applicant for the entire parcel in issue; (2) the present value of the parcel or any part thereof; (3) the expenses attributable to maintenance; (4) the amount of taxes on the land in issue; (5) the amount of mortgages and other encumbrances; (6) income from the land in issue; and (7) other facts relevant to the particular circumstances of the case.⁸ It seems clear that the proof required by the "dollars and cents" rule is not met by a simple statement on the part of a realtor that the land will not at this time attract a developer for a purpose consistent with the zoning ordinance.⁹ Similarly, where part of the land in issue is being used for a purpose which conforms to the zoning regulations, the opinion of a real-estate broker that the land will not yield a reasonable return if it is devoted to a conforming use is insufficient to satisfy the requirement of dollars and cents proof.¹⁰ Proof is insufficient where a landowner testifies that his land is unsuitable for farming because an adjacent dump causes flies and odors, and that his oral attempt to sell the land was unsuccessful.¹¹

In determining whether an applicant has met his burden of proof, a board of appeals may take into consideration expenses incurred in good faith reliance on an invalid permit.¹² The board may also consider a landowner's good faith reliance on an assurance by a town clerk that he had a right of nonconforming use.¹³

8. *Crossroads Recreation, Inc. v Broz*, 4 NY2d 39, 172 NYS2d 129, 149 NE2d 65 (1958).

9. *Congregation Beth El v Crowley*, 30 Misc 2d 90, 217 NYS2d 937 (1961).

10. *Fusco v Oyster Bay*, 23 Misc 2d 72, 200 NYS2d 567 (1960).

Proof that land will not yield a reasonable return is insufficient where the owner, a physician, purchased a dwelling for \$2,500, remodeled it at a cost of \$10,000, used it as an office for 20 years and then declined an offer from a purchaser willing to pay \$12,000. *Hunt v Carusone*, 28 AD2d 612, 280 NYS2d 26 (1967, 3d Dept).

Inability to realize a reasonable return from any permitted use is not proved where the only evidence is the

unsupported opinion of the president of the applicant, that it would not be economically feasible to renovate the premises for residential use. *Everhart v Johnston*, 30 AD2d 608, 290 NYS2d 348 (1968, 3d Dept).

11. *Tantalo v Zoning Bd. of Appeals*, 43 AD2d 793, 350 NYS2d 486 (1973, 4th Dept); discussed in *Anderson, Land Use Control, 1974 Survey of New York Law*, 26 *Syracuse L Rev* 149 (1975).

12. *Cougevan v Martens*, 85 AD2d 890, 446 NYS2d 754, (1981, 4th Dept).

13. Where a landowner has been informed by the city clerk that he has a nonconforming use, and where the applicant relied on the information and maintained the use in issue for a long period of time, the board of ap-

The Fulling v Palumbo analysis, discussed in an earlier section,¹⁴ is not applicable to use variances.¹⁵

§ 23.14. Inability to sell for permitted use.

Proof that land cannot be sold for any use permitted by the zoning regulations is evidence that the land will not yield a reasonable return if its use is confined to those permitted by existing zoning regulations. However, the fact that land has not been sold is not proof that it could not have been.¹⁶ Lack of offers to purchase is insignificant if the owner has made no effort to sell the land,¹⁷ or if he did not have a marketable title during the period when the land was offered.¹⁸ Failure to sell land for a permitted purpose is evidence that it will not bring a reasonable return if used for such purpose only if the owner has made an active effort to sell.¹⁹

peals should take these equities into consideration in determining whether a variance to continue the use should be granted. *Messina v Lufthansa German Airlines*, 64 AD2d 890, 408 NYS2d 109 (1978, 2d Dept), *affd* 47 NY2d 111, 417 NYS2d 39, 390 NE2d 758, *remititur den* 48 NY2d 936, 425 NYS2d 93, 401 NE2d 215.

14. See § 3.10, *supra*.

15. *Fulling v Palumbo* involved an area variance, not a use variance which may be granted only upon a showing of unnecessary hardship. The case is not applicable where a use variance is involved. *Dauernheim, Inc. v Town Bd. of Hempstead*, 33 NY2d 468, 354 NYS2d 909, 310 NE2d 516 (1974).

16. *Ernst v Board of Appeals on Zoning*, 298 NY 831, 84 NE2d 144 (1949).

17. *Taxpayers' Ass'n of South East Oceanside v Board of Zoning Appeals*, 301 NY 215, 93 NE2d 645 (1950).

Proof that a lot improved by a dwelling will not sell for residential use is inadequate where the applicant for a variance does not demonstrate a

diligent and bona fide effort to sell. *Shiner v Board of Estimate*, 95 AD2d 831, 463 NYS2d 872 (1983, 2d Dept).

18. *Application of Graham*, 7 Misc 2d 34, 165 NYS2d 154 (1957).

19. *Shaw v Giglio*, 31 Misc 2d 282, 220 NYS2d 44 (1961).

Proof that the subject property cannot be sold for any permitted use is evidence that the land will not yield a reasonable return, but the owner's attempt to sell must be diligent and bona fide. *Moore v Nowakowski*, 44 AD2d 901, 355 NYS2d 882 (1974, 4th Dept), *mod* 46 AD2d 996, 361 NYS2d 795 (4th Dept); citing *Anderson, New York Zoning Law and Practice*, 2nd Ed. § 18.13; and discussed in *Anderson, Land Use Control*, 1974 Survey of New York Law, 26 Syracuse L Rev 149 (1975).

A variance to establish a gasoline station was properly denied where the applicant failed to prove any attempt to sell or lease the subject property or to present any proof of the amount of original investment or the present market value of such property. *Cities Service Oil Co. v Sacca*, 54 AD2d 981, 389 NYS2d 26 (1976, 2d Dept).

A variance may not be denied for failure of the applicant to make a bona fide offer to sell the subject property to an abutting owner.²⁰ A variance may be granted to permit a school board to lease a school building for industrial use where the school board has shown that the school cannot be rented for permitted purposes, to yield enough to cover debt service, and that efforts to sell the property have been unsuccessful.¹

§ 23.15. Financial loss caused by zoning ordinances.

The New York courts recognize that the imposition of zoning regulations, like the enforcement of all restrictions adopted pursuant to the police power, may reduce the value of certain lands and cause financial loss to some landowners.² However, a zoning ordinance is not unconstitutional simply because it reduces the value of some lands,³ and the mere imposition of a financial loss upon an owner of land is not necessarily a hardship which will justify the granting of a variance to relieve or mitigate such loss.⁴ Relief from relatively minor loss ordinarily will not be granted.⁵ The proposition was succinctly stated by a

20. *Plattner v Sacca*, 49 AD2d 602, 370 NYS2d 188 (1975, 2d Dept), app dismd 37 NY2d 806, 375 NYS2d 569, 338 NE2d 326.

1. *Foster v Saylor*, 85 AD2d 876, 447 NYS2d 75 (1981, 4th Dept); citing *Anderson*, *New York Zoning Law and Practices* § 18.13 (2nd ed, 1973).

2. *Little v Young*, 82 NYS2d 909 (1948, Sup), affd 274 AD 1005, 85 NYS2d 41, reh and app den 274 AD 1065, 86 NYS2d 288 and affd 299 NY 699, 87 NE2d 74.

3. § 3.16, *supra*.

4. *Young Women's Hebrew Ass'n v Board of Standards & Appeals*, 266 NY 270, 194 NE 751 (1935), app dismd 296 US 537, 80 L Ed 382, 56 S Ct 109.

Proof that a zoning ordinance is confiscatory as applied is insufficient where it simply shows that the land is worth \$140,000 to \$170,000 as zoned, but would be worth \$900,000 if office use were permitted. *Northern West-*

chester Professional Park Associates v Bedford, 92 AD2d 267, 460 NYS2d 112 (1983, 2d Dept) affd 60 NY2d 492, 470 NYS2d 350, 458 NE2d 809.

5. A variance to permit the parking of eight trucks on land where only six were permitted, and to reduce setback requirements, will not be sustained where the evidence does not show that the limitations will be economically injurious to the landowner. *Gregory v Board of Appeals*, 87 AD2d 1000, 450 NYS2d 131 (1982, 4th Dept), affd 57 NY2d 865, 456 NYS2d 39, 442 NE2d 437.

Denial of an excavation permit for a portion of the landowner's property was not confiscatory or unreasonable where the record indicated that the area was highly susceptible to erosion, and he was not prevented from making a reasonable return from the property as a whole. *Pecora v Gossin*, 78 Misc 2d 698, 356 NYS2d 505 (1974), affd 49 AD2d 668, 370 NYS2d 281 (4th Dept).

New York court in the following language:

The mere fact of financial hardship to the individual owner, or the fact that it might be to its financial interest to sell the property . . . does not justify the granting of a variance upon the ground of practical difficulties or unnecessary hardship.⁶

The power of the board of zoning appeals to vary the application of a zoning regulation is regarded as one to be used sparingly. Pecuniary loss to a single individual rarely has been held sufficient to support its use. Thus, proof that an owner of a commercial building was suffering a loss of \$200 to \$300 per week which could be eliminated by a variance to permit a gasoline station on the site was held insufficient to warrant the granting of the variance. The Court of Appeals, reversing a decision of a board of zoning appeals which granted the requested relief, said:

The financial situation or pecuniary hardship of a single owner affords no adequate ground for putting forth this extraordinary power affecting other property owners as well as the public.⁷

Although financial loss alone will not supply the essential element of unnecessary hardship, such loss may be considered by the board of zoning appeals along with other circumstances. The board may, for example, balance the financial loss of the applicant against the probable impact which the requested use will make on the neighborhood.⁸ If the variant use will not seriously injure the neighborhood, the variance may be granted upon a showing of financial loss to the applicant,⁹ but if the proposed use will depreciate surrounding land, financial loss to the applicant will not justify the granting of the requested relief.¹⁰

6. Rochester Transit Corp. v Crowley, 205 Misc 933, 131 NYS2d 493 (1954).

7. See also, Ryback v Murdock, 1 AD2d 131, 148 NYS2d 322 (1956, 1st Dept).

8. Young Women's Hebrew Ass'n v Board of Standards & Appeals, 266 NY 270, 194 NE 751 (1935), app dismd 296 US 537, 80 L Ed 382, 56 S Ct 109.

9. Holy Sepulchre Cemetery v Board of Appeals, 271 AD 33, 60 NYS2d 750 (1946).

9. Rubin v Green, 66 NYS2d 521 (1946, Sup).

10. Young Women's Hebrew Ass'n v Board of Standards & Appeals, 266 NY 270, 194 NE 751 (1935), app dismd 296 US 537, 80 L Ed 382, 56 S Ct 109 (gasoline station in business district); Aberdeen Garage, Inc. v Murdock, 257 AD 645, 15 NYS2d 66 (1939), affd 283 NY 650, 28 NE2d 45 (garage in business district); Joyce v Dobson, 255 AD 348, 8 NYS2d 768 (1938) (gasoline station in residential district).

§ 23.21. Effect of obsolete improvements.

A board of zoning appeals may grant a use variance on the ground of unnecessary hardship where the land is incapable of yielding a fair return on a conforming use because of obsolete or dilapidated improvements. Land in a highly restricted residential district, for example, was occupied by 100-year-old buildings which were in disrepair. The existence of the buildings made the land useless for purposes permitted by the zoning regulations. The board of zoning appeals was upheld when it granted the landowner a variance to establish and maintain a riding academy.¹⁶ The same result was reached where the applicant's land was improved by a barn so large as to render impractical its conversion to a single-family residence.¹⁷ Similarly, the granting of a variance to build a gasoline station in a residential district was upheld where the land was incapable of producing a reasonable return from a residential use because of improvements which were ancient and unusable for residential purposes.¹⁸

§ 23.22. Effect of landowner's personal problems.

When a board of zoning appeals grants a use variance, the right to use the land in a particular way relates to the land. It is not a right personal to the owner, although he can enforce it as long as he is the owner of the property. The variance runs with the land; it can be enjoyed by an owner other than the person who applied for it.¹⁹ It follows that the unnecessary hardship which will support the granting of a use variance must relate to the land, not to the applicant-owner.²⁰ Hardship which is merely personal to the current owner of real property will not justify the granting of a variance which will run with the land itself. One New York court said, "It is not uniqueness of the plight of

A sufficient showing of unnecessary hardship is made where the landowner has proved that the swampy nature of the land renders development so expensive that single family detached homes would be priced well above the market in the area in question. *Douglaston Civic Asso. v Klein*, 67 AD2d 54, 414 NYS2d 358 (1979, 2d Dept), *affd* 51 NY2d 963, 435 NYS2d 705, 416 NE2d 1040.

16. *Banister v Board of Appeals*, 65 NYS2d 15 (1946, Sup).

17. *Fiore v Zoning Bd. of Appeals*, 21 NY2d 393, 288 NYS2d 62, 235 NE2d 121 (1968).

18. *Hopkins v Board of Appeals*, 179 Misc 325, 39 NYS2d 167 (1942).

19. § 23.02, *supra*.

20. *Hickox v Griffin*, 298 NY 365, 83 NE2d 836 (1949).

the owner, but uniqueness of the land causing the plight that is the criterion."¹ For example, a variance to permit a second kitchen in a single family residential district is improper, notwithstanding that the occupants are a father, his son, and a daughter-in-law, and the purpose of the second kitchen was to permit establishment of a kosher facility.²

Failure on the part of the board of zoning appeals to confine the issuance of use variances to cases where the hardship relates to the land may yield diversity of result and subject the board to accusations of favoritism. This hazard is illustrated by three cases decided by the Syracuse board. In one of these, an applicant was denied a variance to establish a barbershop in his home in a residential district.³ The hardship asserted by the applicant was based upon the illness of his wife which made it necessary for him to be near her while he worked. The board, consistent with the court decisions, said that this was not such hardship as would support the granting of a variance because it was "not associated with the use of the land, but is based upon personal circumstances." If the decision was harsh, it was because of the harshness of the standards which limit the power of the board. However, in an earlier decision the board granted a variance to maintain a sales office in a dwelling, where the applicant's hardship was based upon his confinement to a wheelchair.⁴ Also, the widow of a physician was permitted to rent office space in her dwelling to a nonresident physician, the variance being specifically limited to her, and conditioned to expire upon her death.⁵

The facts which supported a denial of a permit to establish a barbershop seem not to be more personal to the applicant than the facts which supported the granting of variances to the injured applicant and the widow. Perhaps the decisive factor was the board's estimate of the probable impact of the requested uses. The barber's plans showed a barber pole outside his dwell-

1. *Congregation Beth El v Crowley*, 30 Misc 2d 90, 217 NYS2d 937 (1961).

See also, *Neiburger v Lewis*, 185 Misc 437, 57 NYS2d 542 (1945).

2. *Baskin v Zoning Bd. of Appeals*, 48 AD2d 667, 367 NYS2d 829 (1975, 2d Dept), revd 40 NY2d 942, 390

NYS2d 412, 358 NE2d 1037.

3. *Syracuse Board of Appeals*, File No V-61-16.

4. *Syracuse Board of Appeals*, File No V-60-36.

5. *Syracuse Board of Appeals*, File No V-59-32.

NEW WINDSOR ZONING BOARD OF APPEALS
Regular Session
September 10, 1984

MEMBERS PRESENT: DANIEL P. KONKOL, CHAIRMAN
JOSEPH SKOPIN, V. CHAIRMAN
JACK BABCOCK
RICHARD FENWICK
VINCENT BIVONA
JOHN PAGANO
JAMES NUGENT

MEMBERS ABSENT: NONE

ALSO PRESENT: ANDREW S. KRIEGER, ESQ.
Attorney for ZBA
PATRICIA DELIO, Secretary

The September 10, 1984 session of the Zoning Board of Appeals was called to order by Chairman Daniel P. Konkol at 7:30 p.m. Secretary called the roll.

Motion followed by Richard Fenwick, seconded by Joseph Skopin to approve the minutes of the 8/13/84 meeting with one addition, to wit: Richard Fenwick's name added to the addendance list of Members Present. ROLL CALL: 5-0. (Two ZBA members did not appear until after motion was made).

* * * * *

PRELIMINARY MEETING:

SHEFLIN/KONDOR - Request to convert one family dwelling located at 27 Cullen Avenue (PI zone), to multi-family (4 family) use. Mr. Stephen Kondor, contract purchaser of Sheflin residence, appeared before the Board with sketches of two lot area containing approximately 15,865 sq. ft., and explained that there is a one-family use at present. Town water and sewer are available. Mr. Kondor explained that he doesn't not intend to reside at the site but added that there is a need for small-family apartments within the Town.

Chairman Konkol stressed that the ZBA would require floor plan layouts of each apartment, including sanitary facilities. Also, extensive fire code requirements would have to be met. Mr. Kondor was then referred to the Building and Fire Inspectors for this information.

Motion was made by Joseph Skopin, seconded by Richard Fenwick that a public hearing be scheduled upon the completion of the necessary paperwork and site plans. ROLL CALL: 6-0. Motion carried.

September 10, 1984

PRELIMINARY MEETING:

VALLEY VIEW DEVELOPMENT - Request by developer to construct a one-family frame attached dwelling on Route 32, Valley View Development (formerly The Commons at Windsor), New Windsor, N.Y. An area variance of 4.75 ft. (sideyard) was requested by Ms. Terry Stauffer, who was present representing Valley View. Ms. Stauffer stated that the request was for the construction of a home on the existing foundation. No plans were presented at the time of the preliminary meeting.

Chairman Konkol pointed out that since there were no site plans to present concerning the layout of the dwelling, a second preliminary meeting would have to be held to review the plans.

Ms. Stauffer requested to contact the Secretary to be placed on a future agenda.

* * * * *

PRELIMINARY MEETING:

LANDMAN, MARVIN - Request for construction of a watchman's trailer on premises located on Rt. 32 (AMJ Meat Warehouse). Applicant was a NO SHOW.

* * * * *

PRELIMINARY MEETING:

ZETA HOLDING CORP./PATSALOS - Request for construction of combination restaurant/health club on the east side of Union Avenue (Rt. 300) on Patsalos property which is zoned OLI. Project would require a use variance and possible height variance. Richard J. Drake, Esq. of Rider, Drake, Sommers & Loeb, present representing applicant ZETA.

Mr. Drake presented three preliminary plans for an operation which would include membership (walk-in basis), Nautilus, hair stylist, hot tubs, nutrition center with no racquet sports available.

Mr. Krieger stated that, since there is no mention in the local law for a specific membership club, Section 48-12 - Table of Use Regs. does mention the category of "Other Membership Clubs".

Chairman Konkol requested that Mr. Drake meet with Mr. Kennedy, Building Inspector, to ascertain what was needed since no specific plans were furnished with detailed dimensions of the proposed construction. Mr. Krieger also requested that the site plans detail a commitment as to the height of the building, the use nature of the surrounding area with specific information to be contained in the plot plan which will influence the traffic flow.

September 10, 1984

Secretary requested to schedule a second preliminary meeting when the site plan is received.

* * * * *

PUBLIC HEARING in the matter of the Application of OCCUPATIONS, INC. - request for 9 ft. (incl. 3-strand barbed wire) fencing on rear of property located on Route 32 in the Town of New Windsor. Mr. Phil Haakmeester of Occupations, Inc., present. Mr. Haakmeester presented plans dated 6/1/84; applications; public hearing notice which appeared in The Sentinel on 8/30/84; Town Assessor's List containing 14 names and addresses of adjacent property owners; 14 return receipts from adjacent property owners; Fees were waived by the Board.

Hearing no objection, the Board received and filed a communication dated 9/4/84 from Orange County Planning and Economic Development. There were no objections to the approval of the application. However, Mr. Garrison stated that corrective measures would be taken by applicant concerning the conditions of the grounds.

There were no spectators present for public hearing.

Public hearing was recorded on Tape #131 on file in the Secretary's Office.

After the close of the public hearing, motion was made by Jack Babcock, seconded by Richard Fenwick to approve a 9 ft. (including 3-strand barbed wire) fencing as applied for and in conjunction with plans submitted and dated 6/1/84. ROLL CALL: 7-0. Application approved.

* * * * *

PUBLIC HEARING in the matter of the Application of CHARLES COOMBS - request for single unit mobile home park on property located on Twin Arch Road in an R-3 zone. Special permit and use variance required.

Elias D. Grevas, L. S., appeared representing Mr. Coombs and presented: Applications, site plan, proof of publication in The Sentinel (8/30/84), Town Assessor's List containing 48 names and addresses of adjacent property owners; 43 return receipts from adjacent property owners, fee in the amount of \$25.00 for variance application.

Mr. Grevas stated that there is presently no structures on the property which is 2.09 acres of land with 100 ft. frontage on Twin Arch Road. Structure would be a permanent residence for Mr. and Mrs. Coombs, who have owned the property since July 1964. There is existing septic system and well.

September 10, 1984

There were approximately 15 spectators present at public hearing. Many had questions and comments to make. Two adjacent residents objected to the application before the Board.

Public hearing was recorded on Tape #131 on file in Secretary's Office.

After the close of the public hearing, motion was made by Richard Fenwick, seconded by John Pagano to grant the special permit and use variance in accordance with plans received and dated 8/6/84. ROLL CALL: 0 ayes - 5 nays - 2 abstentions (Skopin and Konkol). Motion denied. Application DENIED.

Formal decisions would be drafted and acted upon at a later date regarding the public hearings held this date.

* * * * *

Hearing no objection, the Board received and filed a communication dated 8/20/84 which was furnished by the Building Inspector from Mr. Frank Tersillo Re: Rosenbaum's property to the rear.

* * * * *

Discussion period followed wherein some of the members stated blatant violations throughout the Town, i.e. canopy over pumps at Sunoco Gas Station (Windsor Highway Sunoco) which was recently installed. Secretary requested to contact the Building Inspector concerning the building permit obtained in this connection. Also, it was mentioned that Honda Motorcycle (C. P. Mans) has about nineteen more signs over and above the original approval.

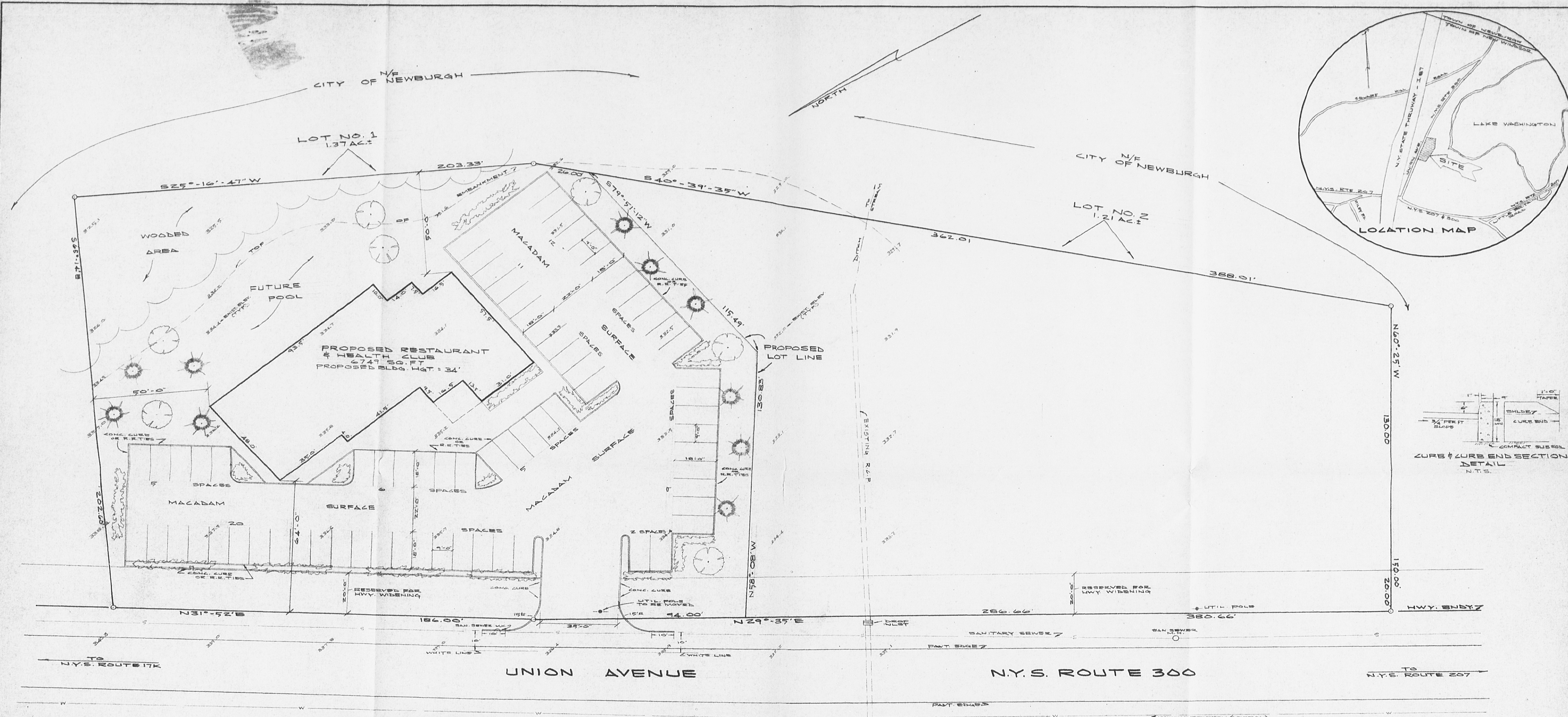
Also, a long discussion ensued concerning the lack of preparation of applicants appearing before the Board. Secretary instructed that in the future she will not schedule any preliminary matters on the agenda until formal site plans are submitted.

Since there was no further discussions to be held, motion was made by John Pagano, seconded by Joseph Skopin to adjourn. Motion carried, all ayes. Meeting adjourned.

Respectfully submitted,

Patricia Delio

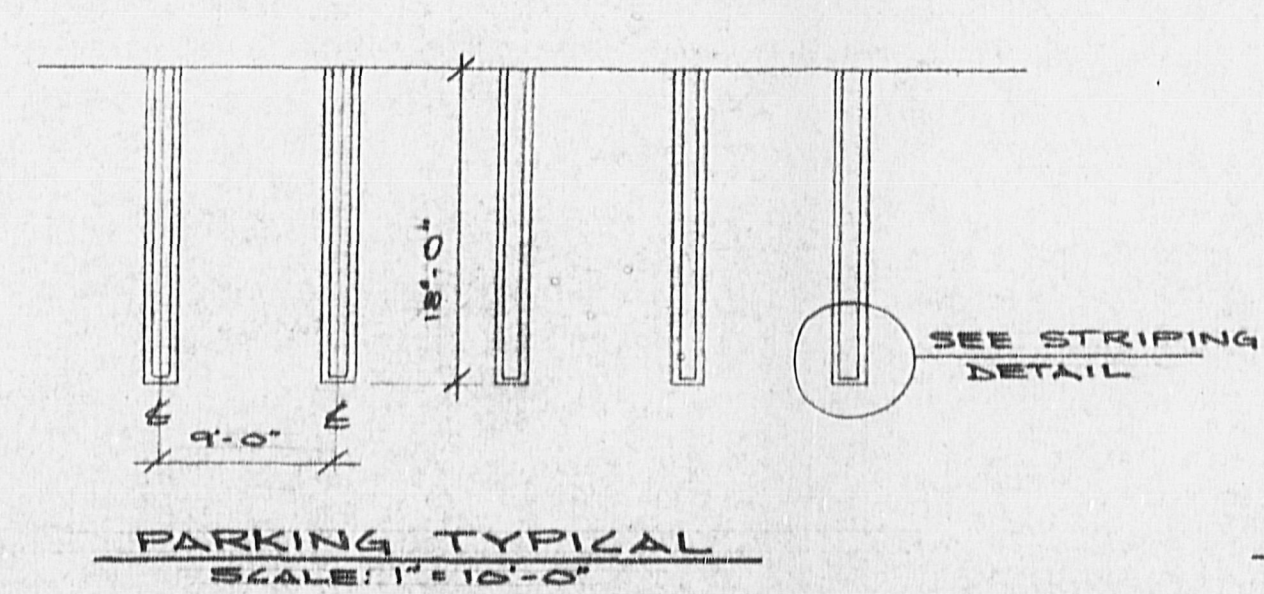
PATRICIA DELIO, Secretary



PLANTINGS:
 A. HIGH PLANTINGS: WHITE PINED MAPLE OR SIMILAR.
 B. LOW PLANTINGS: JUNIPER, YEW OR SIMILAR

PAVING SECTION:
 8" R.O.B. GRAVEL
 2" BINDER COURSE (BLACKTOP)
 1" TOP COURSE (BLACKTOP)

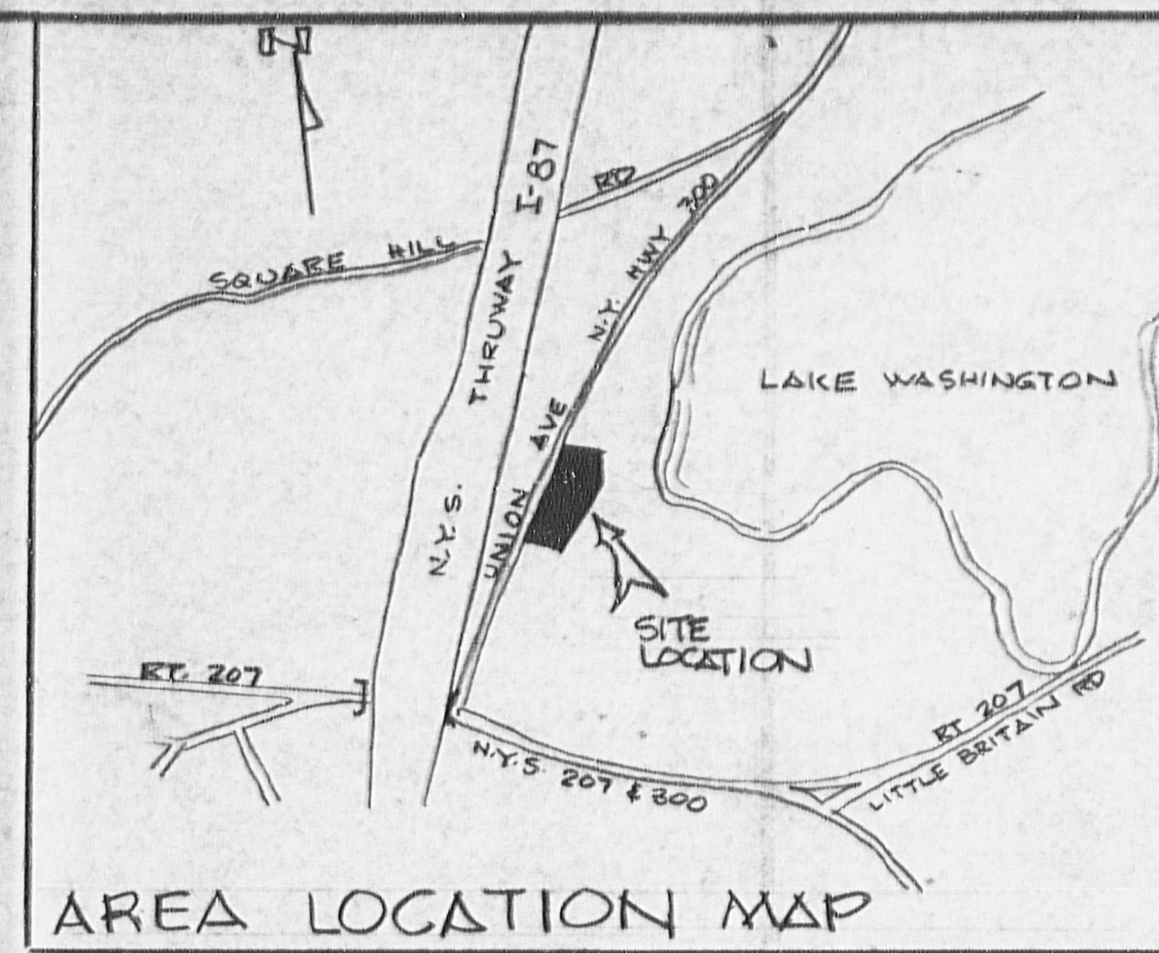
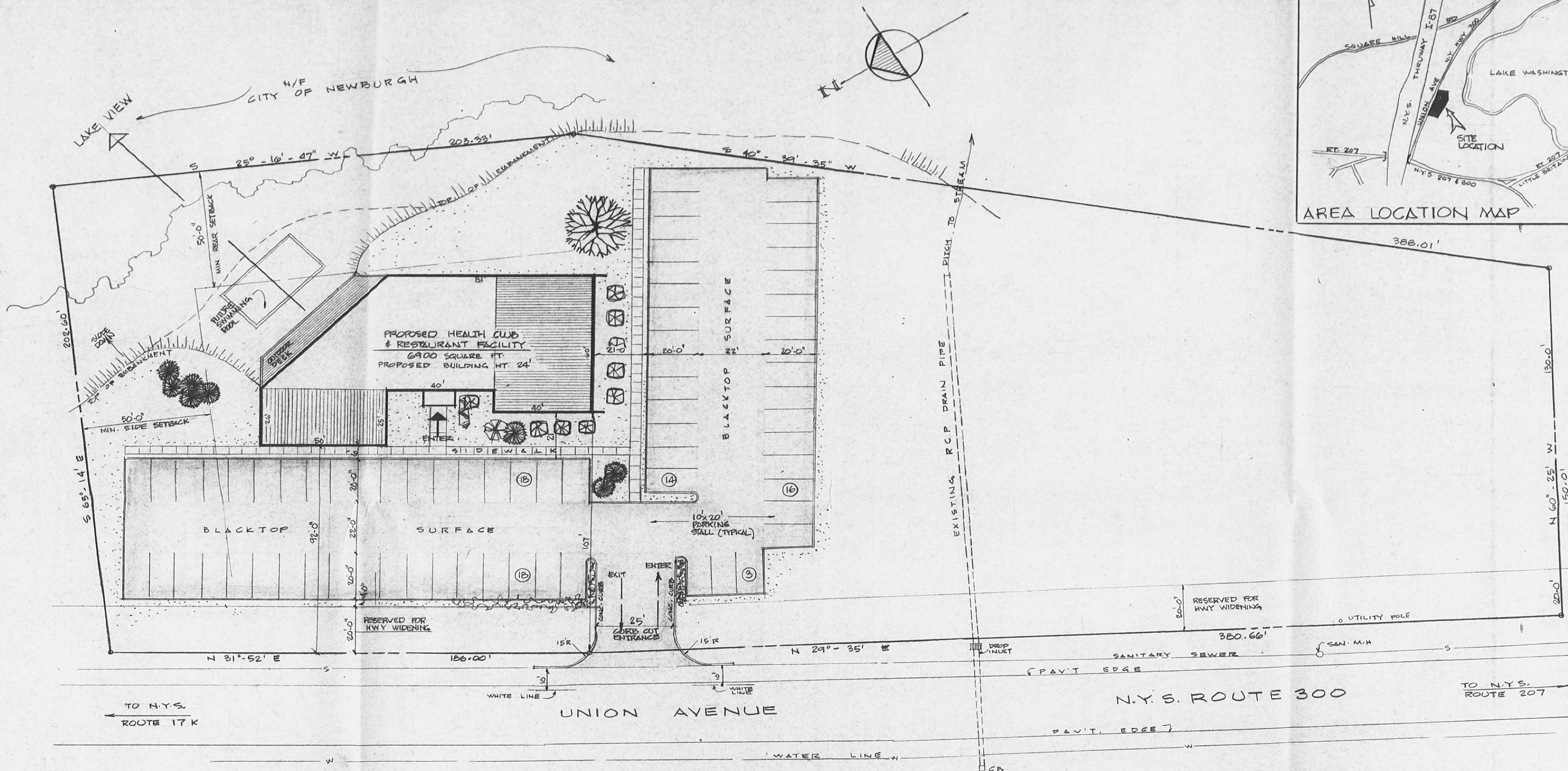
GENERAL NOTES:
 1. TOTAL PARCEL AREA = 2.59 AC. ±
 2. BOUNDARY SURVEY BY OTHERS
 3. ZONE DISTRICT O.L.I.



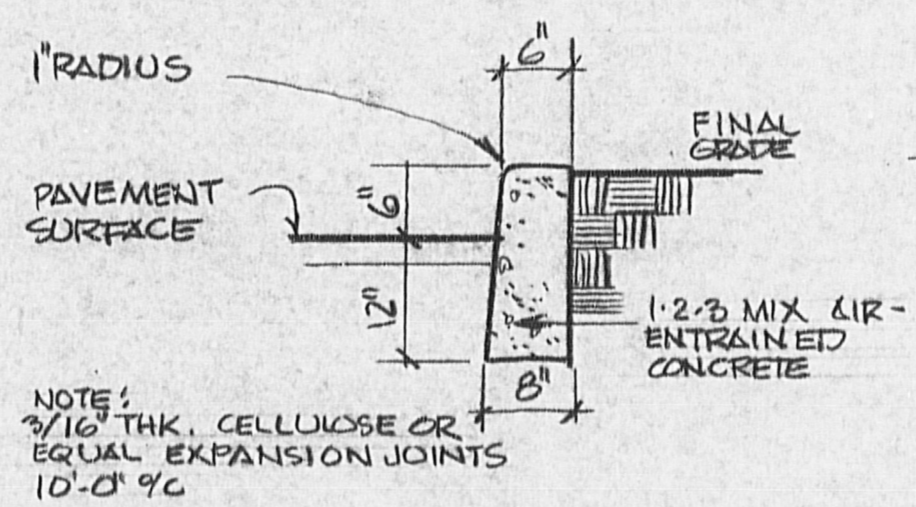
SITE PLAN FOR
NEWBURGH HEALTH CLUB
 TOWN OF NEW WINDSOR ORANGE CO., N.Y.
 DATE: 10-21-84 SCALE: 1"=20'
 SITE DEVELOPER: LOGIC #1
 TAX MAP DATA: SECT 4 BLK. 1 LOT 9.21
 OWNER OF RECORD: ZETA HOLDING CORP.
 REFERENCE DEEDS: L1841 P185 & L2087 P1066

PREPARED BY:
VINCENT J. DOCE ASSOCIATES
 SURVEYORS & PLANNERS
 15 NEW ROAD NEWBURGH, N.Y.

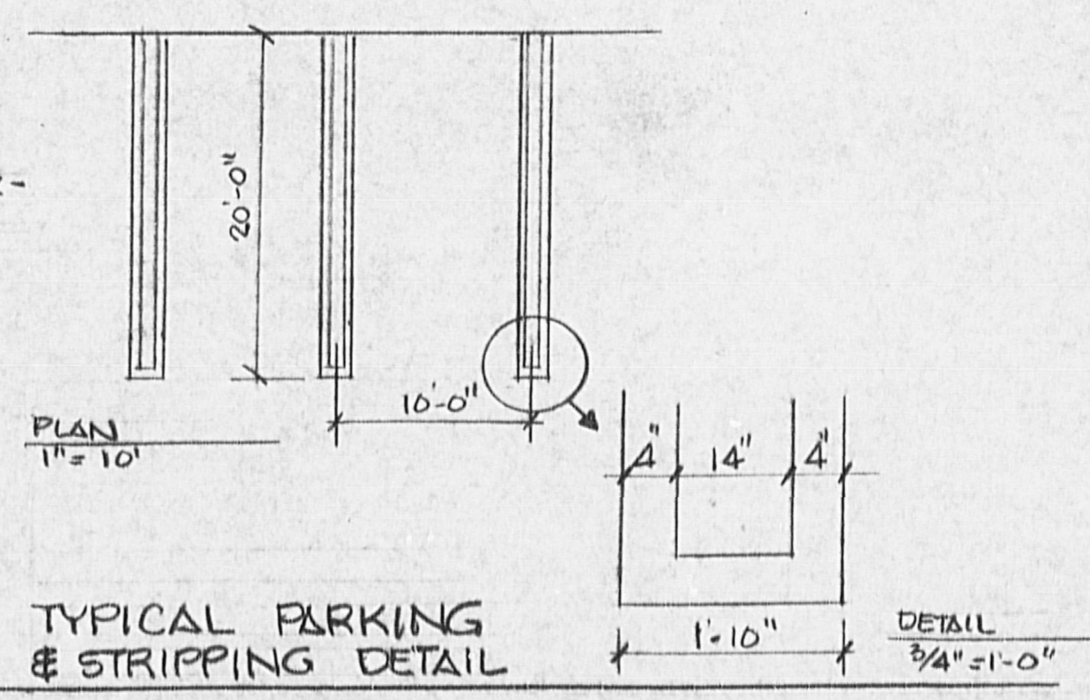




SITE PLAN
SCALE 1"=20'-0"



CURB SECTION
SCALE 3/4"=1'-0"



TYPICAL PARKING & STRIPPING DETAIL

SITE DATA

TAX MAP REFERENCE / SECT. 4 BLK. 1 LOT 9.21
 RECORD OWNER - ZETA HOLDING CORP.
 SITE DEVELOPER - LOGIC #1
 ZONING - O.L.I.I. COFFICE - LIGHT INDUSTRIAL
 LAND AREA - 2,591 ACRES / 112,389 SQ. FT.
 BUILDING GROUND AREA, 6,900 SQ. FT.
 LAND COVERAGE 6%
 PARKING SHOWN 69 CARS

PARKING REQUIRED:
 ANNUAL MEMBERSHIP CLUBS
 RESTAURANT

1 SPACE / 15 MEMBERS = 300 / 15 = 20
 1 SPACE / 3 SEATS = 64 / 3 = 22
 PARKING REQUIRED 42

no	revision	by	date
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RONALD F. DRAGO
 architect / planner
 RD #1 BOX 137A
 RT 208
 MONTGOMERY N.Y. 12549

HEALTH CLUB & RESTAURANT FOR
 LOGIC #1
 UNION AVE
 NEW WINDSOR, N.Y.
 JOB 04-146
 DATE 11-84
 SCALE NOTED
 DWN BY RD

ARTHUR C. ANTHONISEN P.E.
 CONSULTING ENGINEER
 RD #1 BOX 137 MONTGOMERY, N.Y.
 VINCENT J. DOCE ASSOCIATES
 SURVEYORS & PLANNERS
 15 NEW ROAD NEWBURGH, N.Y.